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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/630,119	07/30/2003	Gregory D. Sunvold	IAM 0630 IA	7162
	7590 06/13/2007	EXAMINER		
Killworth, Gottman, Hagan & Schaeff, L.L.P. Suite 500 One Dayton Centre Dayton, OH 45402-2023			YOUNG, MICAH PAUL	
			ART UNIT	PAPER NUMBER
Dayton, OH 43	9402-2023		1618	
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			06/13/2007	PAPER

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

		Application No.	Applicant(s)		
		10/630,119	SUNVOLD, GREGORY D.		
Office Action Summary		Examiner	Art Unit		
		Micah-Paul Young	1618		
Period fo	The MAILING DATE of this communication app or Reply	pears on the cover sheet with the	e correspondence address		
A SH WHIC - Exte after - If NC - Failu Any	ORTENED STATUTORY PERIOD FOR REPLY CHEVER IS LONGER, FROM THE MAILING DANS IN THE MAIL	ATE OF THIS COMMUNICATION  36(a). In no event, however, may a reply be will apply and will expire SIX (6) MONTHS for a cause the application to become ABANDO	ON.  It imply filed  om the mailing date of this communication.  NED (35 U.S.C. § 133).		
Status	•				
1)⊠	Responsive to communication(s) filed on 23 M	<u>arch 2007</u> .			
2a) <u></u> ☐	This action is <b>FINAL</b> . 2b)⊠ This action is non-final.				
3)□	Since this application is in condition for allowar	•			
	closed in accordance with the practice under E	Ex parte Quayle, 1935 C.D. 11,	453 O.G. 213.		
Disposit	ion of Claims				
5) <u></u> 6)⊠	Claim(s) <u>1-32</u> is/are pending in the application.  4a) Of the above claim(s) is/are withdraw  Claim(s) is/are allowed.  Claim(s) <u>1-32</u> is/are rejected.  Claim(s) is/are objected to.  Claim(s) are subject to restriction and/or	vn from consideration.			
Applicati	ion Papers				
10)	The specification is objected to by the Examine The drawing(s) filed on is/are: a) access Applicant may not request that any objection to the Replacement drawing sheet(s) including the correct The oath or declaration is objected to by the Ex	epted or b) objected to by the drawing(s) be held in abeyance. So ion is required if the drawing(s) is a	See 37 CFR 1.85(a). objected to. See 37 CFR 1.121(d).		
Priority ι	under 35 U.S.C. § 119				
a)	Acknowledgment is made of a claim for foreign  All b) Some * c) None of:  Certified copies of the priority documents  Certified copies of the priority documents  Copies of the certified copies of the priority documents  application from the International Bureau  See the attached detailed Office action for a list of	s have been received. s have been received in Applicatity documents have been received in Received in Received in (PCT Rule 17.2(a)).	ation No ived in this National Stage		
Attachmen	e of References Cited (PTO-892)	4) 🔲 Interview Summa	on (PTO 442)		
2)  Notic 3)  Inform	the of References Cited (FTO-692) the of Draftsperson's Patent Drawing Review (PTO-948) mation Disclosure Statement(s) (PTO/SB/08) or No(s)/Mail Date	Paper No(s)/Mail 5) Notice of Informa 6) Other:	Date		

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## **DETAILED ACTION**

Acknowledgement of Papers Received: Response dated 3/21/07.

## Claim Rejections - 35 USC § 103

- 1. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:
  - (a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negatived by the manner in which the invention was made.
- 2. The factual inquiries set forth in *Graham* v. *John Deere Co.*, 383 U.S. 1, 148 USPQ 459 (1966), that are applied for establishing a background for determining obviousness under 35 U.S.C. 103(a) are summarized as follows:
  - 1. Determining the scope and contents of the prior art.
  - 2. Ascertaining the differences between the prior art and the claims at issue.
  - 3. Resolving the level of ordinary skill in the pertinent art.
  - 4. Considering objective evidence present in the application indicating obviousness or nonobviousness.
- 3. Claims 1-32 are rejected under 35 U.S.C. 103(a) as being unpatentable over the combined disclosures of Sunvold et al (USPN 6,180,131 hereafter '131) in view of Brown et al (USPN 5,894,029 hereafter '029). The claims are drawn to a process for limiting weight gain in a cat comprising the feeding of said cat a specific formulation comprising a protein source, fat, and a carbohydrate from a grain source other than rice.
- 4. The '131 patent teaches a method of feeding pets such as cats a diet comprising a food composition comprising a source of protein, a source of fat and a carbohydrate grain source (abstract, Table 1). The pet food promotes satiety since it is filling, thereby promoting a voluntary decrease in food intake (abstract). The carbohydrate source includes corn grits, the

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protein source includes chicken and the fat includes chicken fat (Table 3). The composition comprises 23.4% of a protein source (chicken), 4.2% of a fat component, and 3.6-4.2% of a fiber carbohydrate source, and a remaining percentage of corn grits (Table 3). It would have been inherent that the cat population would include males thus food would be provided and consumed following the method of the '131 patent.

- 1. The combination is silent to the inclusion of sorghum or barley yet the reference suggests the inclusion of oats. The inclusion of rain mixtures and blends into pet foods is well within the level of skill in the art as seen by the '029 patent.
- 2. The '029 patent discloses a pet snack food comprising spices, protein materials and carbohydrate blends (abstract). The carbohydrates include corn, oats, sorghum, and barley (col. 2, lin. 34-52). It would have been well within the level of skill in the art to include these combinations in to the food product of the '131 in order to provide an improved nutritional source of stability material.
- 3. Regarding the claims reciting specific ratios and percentages it is the position of the Examiner that such limitations do not impart patentability on the claims. The prior art discloses a method of feeding a cat a feed composition comprising a protein source, a fat source and a carbohydrate grain blend source. The composition of the '131 patent promotes satiety and would inherently treat postprandial conditions since it comprises each of the elements of the instant claims. The '029 patent discloses a high ratio of corn meal to sorghum (col. 5, lin. 39-45). Where the general conditions of a claim are disclosed in the prior art, it is not inventive to discover the optimum or workable ranges by routine experimentation. *See* In re Aller, 220 F.2d 454 105 USPO 233, 235 (CCPA 1955).

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4. Furthermore the claims differ from the reference by reciting various concentrations of the active ingredient(s). However, the preparation of various compositions having various amounts of the active is within the level of skill of one having ordinary skill in the art at the time of the invention. It has also been held that the mere selection of proportions and ranges is not patentable absent a showing of criticality. *See* In re Russell, 439 F.2d 1228 169 USPQ 426 (CCPA 1971).

- 5. Regarding the sex of the cat, it is the position of the Examiner that the sex of the cat does not impart patentability on the claims. The prior art discloses the same process providing the same composition to the same species of animal. Burden is shifted to applicant to provide any significance to the sex of the animal since both methods provide the same results, namely satiety and improved glucose metabolism.
- 6. With these things in mind it is the position of the Examiner that it would be obvious to combine the grain blend of the '029 patent into the feeding method of the '131 in order to improve the stability and nutritional value of the method. It would have been obvious to combine the teachings and suggestions with an expected result of a method of feeding resulting in healthier pets.

## Response to Arguments

7. Applicant's arguments with respect to claims 1-32 have been considered but are moot in view of the new ground(s) of rejection. It remains the position of the Examiner the combination of the Sunvold and Brown obviates the claims. The Sunvold provides a combination of protein, fat, and carbohydrate sources for pet cats. The Brown reference provides the specific grain

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source combinations. The Brown reference is silent to the specific ratios of the instant claims yet discloses similar ratios of large amounts of corn to smaller amounts of other grain sources such as barley, wheat and sorghum. For these reasons the claims remain obviated.

## Correspondence

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Micah-Paul Young whose telephone number is 571-272-0608. The examiner can normally be reached on M-F 6:00-3:30 every other Monday off.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Michael Hartley can be reached on 571-272-0616. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see http://pair-direct.uspto.gov. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

Micah-Paul Young Examiner Art Unit 1618

MP Young

MICHAEL G. HARTLEY
SUPERVISORY PATENT EXAMINER